radiogram and one refrigerator for a total sum of $650 and obtained receipts for them. The said items were left in the possession of the defendant in his house. At the objection hearing the objector produced receipts, a witness to the alleged payment and also a newspaper cutting of February 16, 1955, advertising the sale of a radiogram. The learned Registrar held that the attachment should be set aside in view of the fact that the plaintiffs alleged fraud on the part of the defendant and accordingly the onus lay on them to prove such fraud. As they had not conclusively done so, the learned Registrar held that the objector was a *bona fide* purchaser. The plaintiffs appealed against this decision.

Held: (1) a conclusive proof was not necessary, and what should be considered was whether the badges of fraud indicate an intent to defraud creditors; (2) in this case there were a number of such badges and the appeal must be allowed.

CIVIL SUIT.

S. Peddie for the plaintiff/appellant.

C. O. G. Gould for the objector.

Cur. Adv. Vult.

Wilson J. : — The learned Senior Assistant Registrar allowed this objection on the grounds that the plaintiff had failed to prove conclusively that the objector's claim was fraudulent. It seems quite clear that conclusive proof is not necessary, and that what should be considered is whether the badges of fraud indicate an intent to defraud creditors. There were a number of such badges in this case and the appeal must be allowed and the objector must pay the costs of the appeal and of the hearing before the Senior Assistant Registrar.

Appeal allowed.

Solicitors: *Shearn, Delamore & Co.; Lovelace & Hastings.*

MEENACHI SUNDRAM & ANOR. v. KUNJAN PILLAI

[A. C. J. (Thomson J.) May 3, 1955]

[Ipoh — Civil Appeal No. 5 of 1955]

Landlord and Tenant — Contractual tenancy — Sale of land by landlord — Whether tenancy affected — Bankruptcy of tenant — Disclaimer by Official Assignee — Control of Rent Ordinance, 1948.

This was an appeal from the decision of the President of the Sessions Court at Sungei Siput. The respondent was the monthly tenant of certain premises at No. 143 Main Road, Sungei Siput. At the time of the original letting the proprietors of the premises were the 1st appellant and one Alagappa Chettiar. Alagappa Chettiar died in 1949 and in 1952 the administrator of his estate sold his share to the 2nd appellant. On November 30, 1953, respondent was adjudicated bankrupt. The Official Assignee disclaimed the tenancy. Subsequently the appellants sent a notice to the respondent to vacate the premises. The respondent did not comply with the notice and the appellants thereupon took proceedings to recover possession.

The learned President held that on the change of ownership in 1953 the tenancy of the respondent terminated and as no fresh contract of tenancy was entered into, accordingly he became a statutory tenant within the meaning of s. 15 of the Control of Rent Ordinance, and his adjudication as a bankrupt did not affect his status as a statutory tenant, and therefore he was entitled to the protection of the Control of Rent Ordinance.

Held: (1) at the date of the respondent's adjudication as a bankrupt his original contractual tenancy was still in existence and he was therefore not a statutory tenant within the meaning of the Control of Rent Ordinance; (2) on his bankruptcy his tenancy passed to the Official Assignee and when the Official Assignee disclaimed the tenancy, the right to possession passed to the appellants-landlords.

Cases referred to:—

(1) *Thynne v. Salmon* (1948) 1 K.B. 482.

(2) *Reeves v. Davies* (1921) 2 K.B. 486, 491.

(3) *Ramasamy Pillai v. Meyappa Chettiar* (1955) M.L.J. 105.

CIVIL APPEAL.

S. K. Das for the appellants.

J. R. Devadas for the respondent.

Cur. Adv. Vult.

Thomson J. : — This is an appeal from a decision of the President of the Sessions Court at Sungei Siput relating to certain premises at No. 143 Main Road, Sungei Siput, which are and at all material times have been occupied by the respondent and of which the appellants are the registered proprietors.

The facts of the case have at no time been seriously in dispute.

At one time the proprietors of the premises were the 1st appellant and one Alagappa Chettiar and at some time in 1952 the Administrator of Alagappa Chettiar who had died on 25th January, 1949, sold his share to the 2nd appellant, the transfer being registered on 7th January, 1953. At some time prior to the sale the respondent had become a monthly tenant of the premises at a rent of $80 per month. After the sale the respondent continued in occupation of the premises. According to the evidence no fresh agreement was come to relating to the tenancy. The respondent simply remained in possession of the premises and went on paying rent at the same rate as previously, that is to say at $80 per month. There was, however, one significant difference. Whereas before the sale the rent was paid to the 1st appellant, one of the original proprietors, after the sale it was paid to one Teh Eh Bor, the husband of the 2nd appellant who was the purchaser of Alagappa Chettiar's interest in the property. The evidence is silent on the point but this change in the person to whom rent was paid suggests the inference that at the very lowest the respondent had some sort of constructive notice of a change in the ownership of the premises for it is a circumstance

that ought to have, and, in all human probability, did put him on his enquiry on the point.

Be that as it may, the respondent continued in occupation and continued to pay the rent to Teh Eh Bor.

On 30th November, 1953, the respondent was adjudicated bankrupt on his own petition, a receiving order having been made against him on 23rd November, and on that event by reason of the bankruptcy law the whole of his property vested in the Official Assignee. Rightly or wrongly (the respondent says wrongly) the Official Assignee took the view that the respondent's tenancy of the premises at No. 143 Main Road, existed by virtue of some sort of contract the benefit of which had become vested in him on the bankruptcy and applied to the Court for leave to disclaim which was granted on 17th May, 1954. It would appear, though I do not think this is very important, that the application was opposed by the respondent and that he made subsequent unsuccessful attempts to have the order made on it set aside. For reasons which I do not know and with which I am not concerned the operation of this order was suspended, at any rate, until 14th June, 1954, but in the event in pursuance of it the Official Assignee disclaimed the benefit of the contract with effect from 15th June, 1954. That disclaimer was made on 22nd October, 1954, and on 23rd October the appellants through their solicitors sent a notice to the respondent requesting him to vacate the premises on or before 1st November. He did not comply with that notice and accordingly the present proceedings were commenced on 2nd November, 1954.

In his Statement of Defence the respondent raised a number of defences which do not call for detailed consideration here. His real defence, as was appreciated by the learned President, was that on the change of ownership of the undivided half share of the premises which took place in 1953 his previous tenancy was terminated; that no fresh contract of tenancy was entered into between him and the new part-owner and accordingly he became a statutory tenant within the meaning of section 15 of the Control of Rent Ordinance, 1948. If that was so, he was a statutory tenant at the date of his adjudication and his adjudication did not affect his status in that capacity. He was thus still a statutory tenant at the date of the commencement of the present proceedings and so entitled to the protection of the Control of Rent Ordinance.

The learned President in the event agreed with these contentions of the respondent and accordingly made no order on the claim for possession and ordered the appellants to pay the costs of the action. In his Grounds of Judgment he has set out the circumstances of the case with great simplicity and has said: "The whole crux of the present case is this: Was the tenancy before the adjudication contractual or statutory?" He went on to say that in his view there was no evidence of any contract between the respondent and the appellants and that the payment of rent was not sufficient evidence in itself of a contract. He then held that the respondent was a statutory tenant within the meaning of section 15(a) of the Ordinance and said: "When plaintiff No. 2 became co-owner the old tenancy was determined and a new contract should have been made then. This was not done."

Against this decision the appellants have now appealed.

I have had the benefit of hearing the matter more fully argued than it was in the Sessions Court, but, although I have derived much assistance from the arguments which have been addressed to me, I trust I shall not be regarded as lacking in courtesy if I do not deal with them in detail.

I have come to the conclusion that the case is really a very simple one and that much of its apparent difficulty has arisen by reason of the learned President falling into the fallacy of confusing a contract with its results, a fallacy in part arising from the use in cases of this sort of the useful but dangerous expression 'contractual tenancy'.

A tenant is a person who holds land by virtue of some sort of lawful authority to do so and a tenancy is the estate or interest which such a party has in the land which he holds. One particular form of tenancy arises from a contract, that is to say, an agreement enforceable by law between the tenant and the owner of the land who in this particular connection is known as the landlord. On such a contract being made the tenant acquires an interest in the land, the nature and extent of which are to be ascertained by reference to the terms of the contract, and so long as the tenancy is in existence the interest in the land of the landlord is *pro tanto* diminished. It is well settled law that a letting of a house at a monthly or weekly rent raises the presumption of a monthly or weekly tenancy and the nature of such a tenancy is described in the following passage from *Hill and Redman's Law of Landlord and Tenant* (10th Edition) at page 30:—

"A weekly or other periodic tenancy is a continuing tenancy by the week or other period, and does not expire without notice at the end of the first week or period or at the end of each succeeding week or period, there being not a reletting at the beginning of every week or period but a springing interest which arises and which is only determined by a proper notice to quit."

Once such an interest has been created, I fail to see how it can be affected in any way by any change in the ownership of the land in respect of which it has been created and neither the learned President nor counsel for the respondent has said a single word to assist me on the point. It is a matter of everyday experience that tenancies are assigned. It is equally a matter of everyday experience that in the case of death the benefits and the burdens of tenancies devolve on the personal representative of the landlord or the tenant as the case may be. When land is sold, it is sold subject to the interest of third parties including tenants subject perhaps in this country to the proviso that if the tenant's interest is such that it is required to be registered, registration is necessary. A monthly tenancy in this country, however, does not require to be registered for *ex hypothesi* it cannot be said at any time that it will necessarily extend for more than two months and by reason of section 42(v) of the Land Code if the tenant is in possession his title clearly prevails against a purchaser of the land who becomes the registered proprietor.

When the administrator of Alagappa Chettiar sold his share in the land to the 2nd appellant, what the 2nd appellant acquired was not the whole right title and interest in that share but the whole right title and interest less the right title and interest which was already vested in the respondent and had been vested in him since the creation of his tenancy.

Thus it seems to me abundantly clear that at the date of the respondent's adjudication his original contractual tenancy was still in existence and therefore at that stage he was not a statutory tenant within the meaning of the Control of Rent Ordinance for a statutory tenancy cannot arise while the contractual tenancy in respect of the same premises still exists (See *Thynne v. Salmon*[1]). On his bankruptcy his tenancy passed to the Official Assignee. Thereafter the tenancy continued in existence but the only person who had any rights as a tenant was the Official Assignee. The respondent though in fact he remained in occupation of the premises only did so as his licensee and apart from that he had no interest in the property. The point was decided by the English Court of Appeal in the case of *Reeves v. Davies*[2] which was a case where a trustee in bankruptcy had disclaimed a quarterly contractual tenancy of a dwelling house which had vested in him on the tenant's bankruptcy and there it was pointed out by Lord Sterndale M.R. :—

> ". . . . where by statute the interest of the tenant of a house has been divested or taken away from him and vested in his trustee by operation of law, the tenant has no more interest in the property than any passer-by in the street, and has no right to intervene."

When the Official Assignee disclaimed the tenancy the effect was to transfer the right to possession from himself to the landlord and in the circumstances it followed that the respondent was not entitled to the protection of the Control of Rent Ordinance. As was pointed out by Scrutton L.J. in *Reeves v. Davies*[2], *supra* :—

> "Where the right to actual possession of the premises has been transferred to the landlord by the disclaimer of the person entitled to such right the former tenant does not become a statutory tenant by reason of the trustee having disclaimed the lease."

What it comes to is this. So long as the Official Assignee was the tenant and allowed the respondent to remain on the premises the respondent was entitled to do so as his licensee. When the tenancy was disclaimed and the right to possession passed to the landlord the respondent's right to remain on the premises came to an end and he became a trespasser. The only material difference between the present case and the case of *Ramasamy Pillai v. Meyappa Chettiar*[3] which I decided some weeks ago is that in the latter case the tenancy which had vested in the Official Assignee was determined by notice to quit and not disclaimed.

That concludes the case but I should perhaps say a word regarding a point that was taken at the trial but perhaps in inadvertence was not taken before me. It was said that after the disclaimer by the Official Assignee the appellants had given the respondent notice to quit and that therefore whatever had happened previously on the expiration of that notice the respondent became a statutory tenant and so entitled to the protection of the Ordinance. The point is without substance. It is true that on 8th July, 1954, solicitors for the appellants addressed a letter to the respondent requiring him to vacate the premises but that letter clearly states that he is a trespasser and can in no sense be regarded as a notice to terminate a tenancy.

The appeal will be allowed. There will be an order against the respondent for possession which by reason of section 14 of the Ordinance shall not be enforceable against sub-tenants, and there will be judgment against the respondent for the costs in the Sessions Court and the costs in this appeal.

Appeal allowed.

Solicitors : *Das & Co.; J. R. Devadas.*